

**IN THE HIGH COURT OF TANZANIA
(MTWARA DISTRICT REGISTRY)**

AT MTWARA

LABOUR REVISION NO.13 OF 2021

(Originating from the Award of the Commission for Mediation and Arbitration for Mtwara in CMA/MTW/98/2020)

DANGOTE CEMENT LIMITED TANZANIA.....APPLICANT

VERSUS

SUFIANI MOHAMED GAU.....1ST RESPONDENT

JUMA MTETA JUMA.....2ND RESPONDENT

RULING

12/7/2022 & 26/7/2022

LALTAIKA, J.:

The applicant, **DANGOTE CEMENT LIMITED TANZANIA**, has brought this application under section 91(1) (a)(b) and (2)(b)(c) of the Employment and Labour Relations Act [Cap. 366 R.E. 2019] read together with Rule 24(1)(2)(a)(b)(c)(d)(e) and (f),24(3)(a)(b)(c) and (d),28(1)(a) and (e) of the Labour Court Rules, G.N. No. 106 of 2007. The respondents are being represented by Mr. Gide Magila, learned Advocate, filed a joint counter affidavit together with a notice of opposition and notice of preliminary objection on the point of law. The notice of preliminary objection on point of law provides: -

-The application filed in this Honourable Court by the applicant is incompetent for being time barred.

When the matter was called on for hearing of the preliminary objection, the applicant was represented by Mr. Stephen Lekey, learned Advocate and the respondents were represented by Mr. Gide Magila, learned Advocate.

Arguing for the point of preliminary objection, Mr. Magila submitted that the labour revision was filed out of time as per section 91(1)(a) of the Employment and Labour Relations Act. The learned Counsel argued that the section provides that revision must be done within six weeks after an award was made. He further contended that the award against which the revision is sought was delivered on 5/11/2021 by the Commission for Mediation and Arbitration CMA for Mtwara. Mr. Magila stressed that the revision was filed in this court on 22/12/2021. He further submitted that according to the provisions of the law six weeks is equal to 42 days which the same lapsed on 17/12/2021. Mr. Magila maintained that since the revision was filed on 22/12/2021 the same was delayed for five (5) days. To substantiate his argument, he referred this court to the case of **Sisal Credit Company Ltd vs Magreth Cathbert Omary and Another**, Civil Appeal No.10 of 2019 at page 2 last paragraph, where this court had stated that the time to be counted is when the matter was filed and accepted by the registrar and payment of the filing fees completed.

On the same argument, Mr. Magila referred this court to the decision of the Court of Appeal in the case of **Ahmed Mohamed Suud and Another vs Mohamed Suud and 2 Others**, Civil Application No.12/17 of 2019 at page 17 the last paragraphs where the Apex Court proffered thus:

"Fortunately, this issue is not novel in our jurisdiction. In numerous cases, this court has pronounced that a document

is taken to have been lodged on the date when it was endorsed and upon payment of the required fee”.

The learned counsel stressed further that the Court of Appeal also provided the same in the last paragraph of page 8 and first paragraph of page 9 together with the first paragraph of page 10. The learned counsel maintained that this court and the Court of Appeal were dealing with issues that are like the matter at hand. Mr. Magila insisted that the contentious matter was on when the matter was filed in court. He argued that it was the position of the court that it is when the document was lodged in court. The learned advocate submitted that there is no dispute that the document before this court was endorsed on 22/12/2021 and that was the same lodged in court. He further contended that according to section 91(1)(a) of the Employment and Labour Relations Act it is apparent that the revision was filed out of time.

Mr. Magila argued that since there was no order of this court to grant extension of time for the same to be filed out of time, the matter should be dismissed as provided for under section 3(1) and (2) of the Law of Limitation Act [Cap 89 R.E. 2022]. The learned counsel concluded his submission in chief by a prayer that this application is dismissed for being time barred.

Responding to the respondents' submission, Mr. Lekey pointed out areas where he differed with his fellow learned brother and those areas that he sought to counterargue. The learned counsel averred that the areas he agreed are: **one**, the time to file revision against an award of the CMA is six weeks from the date of the ruling as per the section cited. **Two**, 6 weeks equals to 42 days. **Three**, counting from the date of the

decision 5/11/2021 when the award was given,42 days expired on 17/12/2021.

Having so conceded, the learned counsel submitted emphatically that the filing of the revision at hand was done online. Mr. Lekey argued that a distinction must be drawn between e-filing and conventional/traditional ways of filing. Mr. Lekey contended that this kind of filing is predicated upon the **Judicature and Application of Laws (Electronic Filing) Rules 2018 G.N. No. 148 of 2018** particularly Rule 8 of the Rules. He argued that Rule 8 provides that all pleadings, petitions, applications, and appeals shall be filed electronically in accordance with the rules. The learned advocate stressed that the phrase **shall be filed** coached in mandatory terms was the reason that the applicant used e-filing for the present application.

It is Mr. Lekey's submission further that although going through the hard copies it is indicated that they were received on 22/12/2021 due to the signature on them, the same does not in any way change the status of a document filed online. Moreover, the learned counsel submitted that the hard copies were in line with Rule 25 of the Electronic Filing Rules (*supra*).

It is Mr. Lekey's submission further that this court has had time to decide on this provision on Labour Revision in the case of **Mohamed Hashil vs National Microfinance Bank Ltd.**, Revision No.106 of 2020. He also argued that the same was true as per the case of **Stephano Mollel and 4 Others vs A1 Hotel and Resort Ltd.**, Revision Application No.90 of 2020 at page 8.

Submitting on how the court is supposed to find out whether a document was filed electronically, Mr. Lekey argued that in the cited case of **Mohamed Hashil** (supra) his Lordship Mwipopo J checked the system on his own thus stated "I have checked the system". He went further and submitted that in the **Stephano Mollel's** case (supra) at page 8 Her Ladyship Kamuzora J. accepted proof of an electronic printout.

The learned counsel argued that the system allows them to make a printout for proof. Thus, he prayed to submit a printout that he averred, was the same as it appears in the JSDS system. The learned advocate insisted that the print out, as per Kamuzora J, cannot be ignored in any way.

It is Mr. Mr. Lekey's submission that going by the printout supplied, the contested document namely **LABOUR REVISION NO 13 OF 2021** is seen to have been submitted on 16/12/2021 at 16:21:56 hours. He emphasised that this is well within the provisions of Rule 21 of the Electronic Filing Rules. The learned counsel argued further that even though the case supplied only had persuasive force, provisions cited were very clear and unambiguous.

To cement his argument, he referred this court to the case of **Republic vs Mwesige Godfrey and Another**, Criminal Appeal No.355 of 2014 where the Court of Appeal held that "...where words are clear, they do not need any interpretation". He further stressed that that is a legal principle known in Latin as *ita scriptum est*.

In the light of that submission, Mr. Lekey submitted that the maxim *ita scriptum est* had been used in many decisions including the case of **Singida Regional Trading Company vs Tanzania Posts and**

Telecommunications Corporations [1979] LRT 11 and also in the case of **Dr. Hamisi Said Kibola vs Goodluck Anthony Shuma and 2 Others** (Misc. Civil Application No. 4 of 2021) TZHC 9404 where this court observed that "the need for statutory construction arises only when there is ambiguity."

Mr. Lekey argued that as to the two cited cases by Mr. Magila, namely **Sisal Credit Co. Ltd.** (supra) and **Mohamed Suud** (supra) were distinguishable from the present matter in the sense that **Mohamed Suud** (supra) was not on e-filing but is on payment of fees. The learned counsel opined further that in **Sisal Credit Co. Ltd** (supra) the matter was also on payment of fees while the instant matter at hand is not on payment of fees. He went on and argued that section 3 of the Law of Limitation (supra) could be applied if the applicant had filed the application out of time. To this end, the learned counsel prayed this court to dismiss the Preliminary Objection.

In a brief rejoinder, Mr. Magila argued that the case of **Mohamed Suud** (supra) was the most recent case delivered by the Court of Appeal on 14/4/2022. He stressed that the case of **Mohamed Suud** (supra) could not, in anyway, be overruled by the decisions of the High Court in the cases of **Stephano Mollel** (supra) and **Mohamed Hashil** (supra).

The learned counsel stressed that the matter at hand is on time and the discipline of the law did not matter. He insisted that **Mohamed Suud** (supra) was on time limitation. He stressed that he was certain that the Court of Appeal was alive to the existence of Rule 21 of the e-filing Rules. Nevertheless, Mr. Magila insisted, the Apex Court still went ahead and made directives on what it considered the best way to know when the

document has been received namely endorsement and payment of the relevant fee.

Submitting on the printout, Mr. Magila argued that it should be disregarded because it was not a part of the pleadings and as an authority, it could not be admitted at this stage. Mr. Magila averred that the Court of Appeal had already provided direction on how to find out the time a document was filed in court as per the case of **Mohamed Suud** (supra). To this end, Mr. Magila prayed that the application be dismissed for being time barred.

Having gone through the submissions of both parties, I am inclined to decide on the merits or otherwise of the application. It is true that section 91(1)(a) of the Employment and Labour Relations Act provides for the time to file revision against an award of the Commission for Mediation and Arbitration to be six weeks (42 days) from the date of the award. For better understanding, I paraphrase section 91(1)(a) as follows: -

"91. -(1) Any party to an arbitration award made under section 88(1) who alleges a defect in any arbitration proceedings under the auspices of the Commission may apply to the Labour Court for a decision to set aside the arbitration award-

(a) within six weeks of the date that the award was served on the applicant unless the alleged defect involves improper procurement;"

It is also undisputed that counting from the date the award was delivered on 5/11/2021, the six weeks or 42 days expired on 17/12/2021. It is also true that the date of filing or lodging documents in court is the date when the Registrar endorsed the documents, and the court fees are

dully paid. See, **Ahmed Mohamed Suud and Another vs Mohamed Suud and 2 Others** (supra) and **Sisal Credit Company Ltd vs Magreth Cathbert Omary and Another** (supra). Furthermore, I have no objection that the case of **Ahmed Mohamed Suud and Another vs Mohamed Suud and 2 Others** (supra) is the most recent decision of the Court of Appeal now which decision binds this court. Nevertheless, as for the matter at hand, I subscribe with Mr. Lekey's submission that the two cases cited by Mr. Magila are distinguishable. They are distinguishable since both cases dealt with the matter of civil nature and not labour dispute like the one before me.

Premised on the above introductory remarks, the issue for my determination is whether the applicant filed **LABOUR REVISION NO.13 OF 2021** within the stipulated statutory time of six weeks or 42 days from the date of the award.

Mr. Lekey's contention that this application was filed online through electronic filing system prompted me to visit the system (JSDS II) to find out whether that was the case and if so what date and time it was. Indeed, my findings show that this application was filed electronically on 16/12/2021 at 16:21:56 hours in our registry with reference No. 88432959. By virtue of the Judicature and Application of Laws (Electronic Filing) Government Notice No.148 published on 13/04/2018 particularly Rule 8 pleadings, petitions, applications, appeals and such other documents shall be filed online. To this end, it was right for the applicant to file present application vide electronic filing system.

For the sake of clarity Rule 21 provides as follows:

"21. -(1) A document shall be considered to have been filed if it is

submitted through the electronic filing system before midnight, East African time, on the date it is submitted, unless a specific time is set by the court, or it is rejected.

(2) A document submitted at or after midnight or on a Saturday, Sunday, or public holiday shall, unless it is rejected by the court, be considered filed the next working day."

As alluded to earlier on, time for filing this application is counted from the date the award was delivered to six weeks or 42 days. Thus, from 5/11/2021 when the award was delivered to 16/12/2021 at 16:21:56 hours when the applicant filed her application vide electronic filing system it was 41 days. It is apparent that the application was filed within the stipulated statutory time as per section 91(1)(a) of the Employment and Labour Relations Act.

In the upshot, I find that the preliminary objection on point of law is unmerited. Therefore, I hereby dismiss it with no order as to costs. The **LABOUR REVISION NO.13 OF 2021** to proceed with hearing to its final determination on merits.

It so ordered.

E.I. LALTAIKA



JUDGE

26.7.2022



Court:

This Ruling is delivered under my hand and the seal of this Court on this 26th day of July,2022 in the presence of Mr. Stephen Lekey, learned Counsel for the applicant and Mr. Gide Magila, the learned Advocate for respondents.



E. I. LALTAIKA

A handwritten signature in blue ink, which appears to read "E. I. Laltaika".

JUDGE

26.7.2022